U.S. Department of Justice

Immigration and Naturalization Service

B9

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: Vermont Service Center Date: OCT 18 2000

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Public Copy

IN RE: Petitioner: [redacted]
Beneficiary:

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he: (1) is the spouse of a citizen or lawful permanent resident of the United States; (2) is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A), 8 U.S.C. 1151(b)(2)(A)(i) or 1153(a)(2)(A) based on that relationship; (3) has resided in the United States with the citizen or lawful permanent resident spouse; (4) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; (5) is a person of good moral character; (6) is a person whose deportation (removal) would result in extreme hardship to himself, or to his child; and (7) entered into the marriage to the citizen or lawful permanent resident in good faith. The director, therefore, denied the petition.

On appeal, counsel asserts that the director's reasons for the denial are based on incorrect facts and/or disregarding evidence already submitted. He submits additional evidence.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

> (i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
> >
> > (C) Is residing in the United States;
> >
> > (D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner entered the United States without inspection on July 23, 1995. The petitioner married his United States citizen spouse on August 22, 1996 at [redacted] Puerto Rico. On January 31, 2000, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(A) requires that the petitioner must be the spouse of a citizen or lawful permanent resident of the United States. 8 C.F.R. 204.2(c)(1)(i)(B) requires that the self-petitioning spouse must establish that he is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. 8 C.F.R. 204.2(c)(2)(ii) requires that a self-petition must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship.

The petitioner furnished no evidence to establish that he was married to [redacted] and to show that she is a citizen of the United States as claimed. The petitioner was, therefore, requested on February 11, 2000 to submit additional evidence. Because the petitioner's response did not contain any evidence related to this request, the director concluded that the petitioner was not eligible for immigrant classification based on such a relationship.

On appeal, counsel submits a copy of the marriage certificate of the petitioner and [redacted] and a copy of [redacted] birth certificate. The petitioner has, therefore, overcome these findings of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(A)

8 C.F.R. 204.2(c)(1)(i)(D) requires the petitioner to establish that he has resided in the United States with his U.S. citizen spouse.

The director reviewed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. He noted that the petitioner's ultimate response contained three affidavits that briefly stated, in part, that he and [redacted] resided together. He determined that these affidavits, however, did not appear to be credible since statements made by the affiants did not conform to statements made by the petitioner regarding his relationship that he made in official, public documents.

On appeal, counsel asserts that the petitioner did reside with his U.S. citizen spouse. He submits copies of the same affidavits determined by the director to appear incredible. He also submits a copy of a rental agreement between the petitioner and his spouse "with the Successors of [redacted]

This rental agreement, however, was signed on April 15, 1999, after the petitioner and his spouse have separated and, thus, further contradicts evidence contained in the record. The lease agreement for an apartment a[redacted]was signed by the petitioner and [redacted] on April 15, 1999. However, (1) the Form I-360 shows that the petitioner claimed to have resided with his spouse at the [redacted] address from August 22, 1996 until November 2, 1999; (2) counsel, on appeal, claims that the petitioner has two U.S. citizen children born after he separated from [redacted] (it is noted that the children were born on March 27, 1998 and on November 27, 1999; therefore, it appears they were separated in 1998); and (3) the petition for divorce filed by the petitioner on January 7, 1999, reflects that the petitioner's spouse had abandoned the home and lives in [redacted]

The inconsistencies of the evidence render the petitioner's claim that he resided with his United States citizen spouse to be less than credible. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). The petitioner has failed to submit credible evidence to establish joint residence. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(D).

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

> [T]he phrase, "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

> (i) Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
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> * * *
>
> (iv) Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed the evidence furnished by the petitioner to establish that he qualifies for the benefit sought. The discussion will not be repeated here. He noted, however, that the petitioner did not mention any physical abuse in any document into which the petitioner had direct input, such as, in his counseling sessions, in his ex parte order, and in his divorce petition. The director noted that in contrast to that, the affidavits furnished from [redacted] stated that [redacted] would abuse the petitioner and she beats him up, and that the affidavit from [redacted] stated that the petitioner was abused and subjected to injustice, and [redacted] would continuously kick, hit, and whip him. The director further noted that if [redacted] actions as described were true, it did not seem credible that the petitioner completely would ignore those incidents when describing the breakdown of his marriage in the divorce petition, when describing his suffering in counseling, and when the protection order was being prepared.

On appeal, counsel asserts that the petitioner met his burden of proof that he was psychologically abused. He states that the petitioner was a battered spouse who could not live with a drug addict that was abusing him with words at home and his workplace. He further asserts that there is no need for specific acts of physical aggression for a divorce to be granted in Puerto Rico. He submits evidence previously furnished and addressed by the director. He also resubmitted a copy of a sworn statement from [redacted] stating, in parts:

> That I am witness that his wife [redacted] would appear at the establishment, very often making demands that [redacted] give her money. Her appearance always very distraught and shabby.
>
> That her presence made [redacted] very nervous and he always tried to calm her and yield to her demands of money. Sometimes she would start screaming and [redacted] had to leave his job and take her home, in order to calm her.

As provided in 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Further, a self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought.

The statement from [redacted] without additional documentary evidence, is insufficient to establish a pattern of abuse and to support a claim that qualifying abuse occurred. As determined by the director, the evidence of non-battering abuse

provided in the present case did not suggest that the marital difficulties claimed by the petitioner were beyond those encountered in many marriages. Further, the record contains no evidence that the marital difficulties were compounded by any effort on the part of the citizen spouse to control the petitioner. Rather, the record indicates that the citizen spouse merely abandoned the marital relationship.

While it is claimed that the petitioner was verbally or psychologically abused by his spouse, it is noted that only until approximately two days after he filed the Form I-360 and approximately two years after the claimed separation did the petitioner seek mental evaluation on February 2, 2000. Further, the Ex-Parte Order of Protection was not filed until February 23, 2000, more than one year after the petitioner filed for divorce. The credibility of this order of protection is questioned as there is no evidence in the record that the petitioner's spouse is even pursuing or stalking the petitioner two years after the claimed separation.

As provided in 8 C.F.R. 204.2(c)(1)(vi), the qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." The evidence in the record, including the evaluation from the therapist and the affidavits, failed to show that the claimed abuse perpetrated toward the petitioner by his spouse was "extreme." Furthermore, it has been determined that the affidavits furnished by the petitioner are less than credible. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i).

The petitioner has failed to establish that he was battered by or was the subject of "extreme cruelty" as contemplated by Congress and as defined in 8 C.F.R. 204.2(c)(1)(vi). The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. 204.2(c)(2)(v), primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check for each locality or state in the United States in which the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self petition.

The director determined that the evidence furnished by the petitioner in response to his request for additional evidence to establish good moral character was insufficient. He noted that although the petitioner furnished a police clearance letter from [redacted] he failed to provide the list of addresses as had been requested in order to determine where he had lived during the three years immediately preceding the filing of the petition or that the solitary clearance letter fro[redacted] sufficiently satisfied the criterion.

On appeal, counsel resubmits a copy of the [redacted] Police Department clearance letter. He states that sending self-serving affidavits seems to be a waste of time. Again, on appeal, the petitioner failed to provide the list of addresses where he had resided as requested by the director.

Further, while counsel claims on appeal that the petitioner is a person of good moral character and that he has never been convicted of any crime in his life, the petitioner failed to submit a self-affidavit attesting to his good moral character. Statements by counsel are not evidence. Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(F).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

> The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here. He noted, however, that while the [redacted] recommended that the petitioner continue therapy, the record contains no evidence to suggest that he would be able to obtain therapy only in the United States or that therapy was unavailable or insufficient in the Dominican Republic.

On appeal, counsel asserts that it would be absurd and nonsensical for a battered spouse, not having any other evidence of extreme hardship, to stay battered and suffering the consequences. He further asserts that the petitioner does have two children who were born in the United States after he separated from his spouse, and that obviously, if their father is deported, they will suffer extreme hardship.

No evidence, however, was furnished to establish that the petitioner is residing with his two U.S. citizen children, or that he is the sole supporter of his two children. Further, the petitioner failed to establish that his removal to the Dominican Republic would result in extreme hardship to his children or why separation from his children would result in extreme hardship to himself or to his children. To establish extreme hardship, the petitioner must demonstrate more than the existence of mere hardship because of family separation or financial difficulties. See Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984), citing Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968), and Matter of W-, 9 I&N Dec. 1 (BIA 1960); see also Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994).

The record does not contain satisfactory evidence to demonstrate that the petitioner's removal would result in extreme hardship to himself or to his children. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

8 C.F.R. 204.2(c)(1)(i)(H) requires the petitioner to establish that he entered into the marriage to the citizen in good faith.

Because the petitioner furnished no evidence to establish that he has met this requirement, he was requested on February 11, 2000 to submit evidence of good-faith marriage. The director listed examples of the evidence he may submit to show joint residence and good-faith marriage. The director noted that the petitioner's response to the request contained neither documentary evidence to support the belief that his intent was bona fide nor a statement from him stating such or describing the relationship.

On appeal, counsel claims that marriages in [redacted] "are presumed to be entered in good faith until one of the parties proves the contrary. It seems that the INS has become a party within a marriage when you determine that a marriage was not entered in good faith. Another question is the fact that marriage is not working properly due to the battering of one of the spouses by the other."

This claim of presumption without documentary evidence, however, is insufficient to establish good-faith marriage as provided in 8 C.F.R. 204.2(c)(1)(i)(H). 8 C.F.R. 204.2(c)(2)(vii) states, in part:

> Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; the affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Additionally, pursuant to 8 C.F.R. 204.2(c)(1)(ix), a spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

The petitioner, on appeal, submits no documentary evidence as had been requested to establish that he entered into the marriage to the citizen in good faith. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(H).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.